



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0467]

RIN 1625-AA87

Security Zone, Baltimore Harbor, MD.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for navigable waters within Baltimore Northwest Harbor, across the West channel, in the vicinity of North Locust Point Marine Terminal. The security zone is needed to protect distinguished guests and attendees during the commission of the USS CARL M. LEVIN (DDG 120). Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Maryland-National Capital Region.

DATES: This rule is effective from 8 a.m. until 1 p.m. on June 24, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0467 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email BM1 Michael Klopp, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410-576-2674, email MDNCRWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The U.S. Navy informed the Coast Guard that the Commissioning of the USS CARL M. LEVIN (DDG 120) will be held on June 24, 2023, in Baltimore Harbor, MD. The commissioning will be in close proximity to navigable waterways within the Captain of the Port, Maryland-National Capital Region's Area of Responsibility, as set forth in 33 CFR 3.25-15. On May 30, 2023, the U. S. Navy requested that a security zone be established to be in effect before, during and after the commissioning ceremony.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to public interest to delay the effective date of this rule. Immediate action is needed to mitigate potential terrorist acts and to enhance public and maritime safety and security. The Coast Guard is unable to publish an NPRM in time to publish a final rule due to the short time period between May 30, 2023, when the event planners notified the Coast Guard of the security posture for the event, and June 24, 2023, when the security zone must be in effect. Delaying the effective date to publish an NPRM would be contrary to the security zone's intended objectives of mitigating potential terrorist acts and enhancing public and maritime safety and security. It is therefore impracticable to publish an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action to restrict vessel traffic is needed to protect life, property and the environment, and delaying the effective date would frustrate the security zone's intended objectives of mitigating potential terrorist acts and enhancing public and maritime safety and security when the event takes place.

III. Legal Authority and Need for Rule

The Coast Guard may issue security zone regulations under authority in 46 U.S.C. 70051 and 70124. The Captain of the Port, Maryland-National Capital Region (COTP) has determined that the commissioning of a U.S. Naval Warship presents a potential target for terrorist attack, sabotage, or other subversive acts, accidents, or other causes of similar nature. This rule is needed to protect distinguished guests and attendants of the commissioning ceremony of the USS CARL M. LEVIN (DDG 120) as well as personnel in and around the commissioning site, navigable waterways, and waterfront facilities.

IV. Discussion of the Rule

This rule establishes a security zone from 8 a.m. until 1 p.m. on June 24, 2023. The security zone will cover all navigable waters from North Locust Point Marine Terminal across West Channel Harbor to the yacht basin Oasis Marina in Northwest Harbor, MD. The duration of the zone is intended to protect personnel in and around the commissioning site, navigable waterways, and waterfront facilities. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these

statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and limited duration of the security zone. This zone impacts a small, designated area of the Northwest Harbor for 5 hours.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or

email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone lasting only 5 hours that will prohibit entry within certain navigable waters of the Patapsco River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T05-0467 to read as follows:

§ 165.T05-0467 Security Zone; Northwest Harbor, Baltimore, MD.

(a) *Location.* The following area is a security zone: All navigable waters of Northwest Harbor, encompassed by a line connecting the following points beginning at 39°16'21.32" N, 076°35'4.81" W, thence to 39°16'33.74" N, 076°34'54.59" W, thence to 39°16'26.98" N, 076°34'43.79" W, thence to 39°16'26.18" N, 076°34'40.62" W, thence to 39°16'11.42" N, 076°34'46.56" W, thence to 39°16'10.56" N, 076°34'50.20" W, and thence along the shore line back to the beginning point, located at Baltimore, MD. These coordinates are based on WGS 84.

- (b) *Definitions.* As used in this section---

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the security zone.

- (c) *Regulations.* (1) Under the general security zone regulations in subpart D of

this part, you may not enter the security zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone number 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, local agencies.

(e) *Enforcement period.* This section will be enforced from 8 a.m. until 1 p.m. on June 24, 2023.

Dated: June 8, 2023.

David E. O'Connell,
Captain, U.S. Coast Guard,
Captain of the Port Sector Maryland-National Capital Region.

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